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September 21, 2006

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

> Re: Oral Ex Parte Communications, CC Docket No. 96-115

Dear Ms. Dortch:

This letter is being filed to notify you that on Wednesday, September 20, the undersigned, counsel to InfoNXX, Inc., met with Michelle Carey, Legal Advisor to Chairman Martin. We discussed the CPNI rules and their applicability to wireless directory assistance service and also DA issues more generally. The attached materials were distributed.

If you have any questions, please contact the undersigned.

Sincerely,

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Counsel to InfoNXX, Inc.

Attachments

Michelle Carey, Esquire cc:

INFONXXX

CPNI Proceeding

(CC Docket No. 96-115)

Lois Pines & Gerry Waldron

September 2006

The Commission Should Protect the Privacy of Wireless Customers' Phone Numbers

Wireless customers may soon be in for a rude awakening. Although wireless carriers have traditionally kept customers' cell phone numbers private, the wireless industry is preparing to unveil a new wireless directory that would make these numbers publicly available for the first time.

The Commission's recent NPRM asks: "[D]oes the mobile and personal nature of wireless phones increase the privacy expectations of wireless customers?" The answer is an emphatic yes. And the Commission should seize this opportunity to protect the privacy of customers' cell phone numbers before it is too late.

THE PROBLEM. <u>Customer privacy is threatened because</u> there is no law or regulation prohibiting a carrier from disclosing a wireless telephone number.

- Since cell phone service was started in the early 1980s, the industry practice has been to not disclose telephone numbers. However, because this practice is not required by law, the industry has always been free to change it. And that is exactly what it is planning to do.
- Specifically, the wireless industry is preparing to offer a new "wireless 411" directory. Although the proposed directory is in some respects a positive development, it threatens the privacy that customers have traditionally enjoyed and relied upon.
- Just as many Americans were surprised to learn that their phone records were available over the Internet, so would many be surprised and upset to learn that their cell phone numbers were available to anyone who would pay for them. The Commission should be proactive by building in safeguards now <u>before</u> complaints arise.

THE ANSWER. The Commission should require carriers to obtain customers' prior consent before publicly disclosing their cell phone numbers.

- Striking the Right Balance. Adopting regulations requiring prior consent strikes
 the proper balance between industry needs and customer privacy. Most
 importantly, the regulations would allow the wireless 411 directory to proceed
 while simultaneously ensuring that the customer retains control over his or her
 cell phone number.
- Requiring Consent is not Burdensome. Regulations protecting privacy will not be burdensome on the industry because they can be complied with in a number of ways, either by blanket consent or refusal or using text to accept or decline a directory assistance request in real-time.
- Privacy Protections Will Strengthen the Directory. Because a directory is only as valuable as the number of people included, privacy protections will strengthen the directory by increasing customer participation. If carriers only provide customers with a choice between full public disclosure or non-participation, many will opt out of the directory entirely. If customers are comfortable that participation would not necessarily force them to relinquish control of their private numbers, more customers would participate.
- Wireless is Different Than Wireline. There are important policy reasons to treat
 wireless numbers differently than wireline numbers. First, wireless phones are
 personal and always with you, so unwanted calls are more intrusive. Second,
 unlike wireline calls, <u>customers pay</u> for incoming wireless calls. Third, reducing
 unwanted wireless calls provides a public safety benefit (e.g., less calls while a
 customer is driving).

The Commission Has the Authority to Adopt Regulations Protecting the Privacy of Wireless Numbers.

• Statutory Authority. Section 222 of the Act imposes broad duties on carriers to protect "the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers." Thus, Section 222 imposes duties that are broader in scope than merely protecting the more narrow category of "customer proprietary network information." The Commission has authority to adopt rules implementing the requirements of Section 222.

<u>Proper Notice</u>. The NPRM specifically asks whether additional protections may be required for wireless customers given the unique privacy concerns that arise in the wireless context. Accordingly, it would be proper to adopt regulations in this rulemaking protecting the privacy of wireless phone numbers.